**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 13085 of 2004**
**With**
**CIVIL APPLICATION No. 3898 of 2005**
**In**
**SPECIAL CIVIL APPLICATION No. 13085 of 2004**
**With**
**CIVIL APPLICATION No. 7042 of 2005**
**In**
**SPECIAL CIVIL APPLICATION No. 13085 of 2004**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE A.M.KAPADIA**
**HONOURABLE MS.JUSTICE H.N.DEVANI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**ASARWA MILLS LTD - Petitioner(s)**
**Versus**
**AJAY H MISHRA & 1 - Respondent(s)**

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**Appearance :**
MR PRABHAKAR UPADYAY for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
MR TR MISHRA for Respondent(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 2,

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**CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA**

**and**

**HONOURABLE MS.JUSTICE H.N.DEVANI**

**Date : 16/07/2007**

**ORAL JUDGMENT**

**(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)**

1. By this petition filed under Article 226 and 227 of the Constitution of India, petitioner-Asarwa Mills Ltd.-employer has prayed to issue writ of mandamus or writ of certiorari or any other appropriate writ, order or direction, quashing and setting aside the impugned order dated 11.10.2002 passed by the Labour Court, Ahmedabad in "T" Application No. 289/1997 at Annexure-H to the petition and order dated 27th August, 2004 passed by the Industrial Court, Ahmedabad in Appeal (IC) No.122/2002 at Annexure-I to the petition.

2. The petition came to be admitted by the learned Single Judge vide order dated 12.10.2004 by issuing rule and also granted interim relief in terms of paragraph-8(B) of the petition and thereby, execution, implementation and operation of both the orders impugned in the petition have been stayed.

3. Thereafter, respondent workman has filed Civil Application No.3898/2005 praying to issue directions to the petitioner to deposit an

amount of Rs.2,36,454.69ps. as per the calculation shown in the application minus the amount of Rs.1,13,160/- already deposited by the respondents i.e. Rs. 1,23,294.69 ps. along with interest.

4. At the time of hearing of this application, it was brought to the notice of learned Single Judge that there are two conflicting views with regard to applicability of provisions of Section 17-B of the Industrial Disputes Act, 1947(I.D. Act) to an award passed under the provisions of the Bombay Industrial Relations Act, 1946(B.I.R. Act). The learned Single Judge therefore, vide order dated 5th December, 2005 referred the matter to the Division Bench for deciding the question as to whether the provisions of Section 17-B of I.D. Act are applicable to an award passed under the provisions of B.I.R. Act or not and accordingly office was directed to place the matter before the Division Bench after taking appropriate orders from the Hon'ble the Chief Justice.

5. Pursuant to the said order, this matter is listed before this Bench for deciding the issue referred to by the Learned Single Judge in his order dated 5th December, 2005.

6. At the time of hearing of this petition and more particularly, issue which has been referred to

us, Mr. Prabhakar Upadyay, learned advocate for the original petitioner-employer and Mr. T.R. Mishra, learned advocate for the respondent-workman submitted that the matter has been amicably settled between the parties, therefore, this Court may not enter into the larger question of applicability of provisions of Section 17-B of I.D. Act to an award passed under the provisions of B.I.R. Act. They further submitted that both the parties have amicably settled the dispute inter-se and they have put the contents of the settlement in writing by way of compromise pursis with their signatures and the same has also been notarised. They therefore, urge that main Special Civil Application itself may be disposed of in terms of settlement instead of deciding the issues referred to this Court.

7. Both the parties are present before us and they have agreed to the settlement arrived at between them.

8. We have considered the submissions advanced by both the learned advocates appearing for the parties. We have also perused the xerox copy of compromise pursis which bears the signatures of both the parties and which is notarised.

9. As per the settlement arrived at between the parties and contents thereof referred to in the

said settlement, it is seen that by this compromise, the respondent workman clearly forgoes all his rights for reinstatement in the service, back wages, rights related to service rendered and rights arising out of the orders passed and agrees that he has no right against the Asarwa Mills, Dholka, Asarwa Mills, Ahmedabad and Bengal Tea and Fabrics with regard to the service rendered, orders passed or in an other way and if at all any rights remain, those rights are hereby forgone pursuant to this compromise or if any right remains, it should be treated that those rights are covered by the amount paid to him pursuant to this compromise. It is further inter-alia stated therein that the amount payable as per this compromise is deposited by Asarwa Mills, Ahmedabad, Proprietor Bengal Tea and Fabrics Limited, by cheque No.021625 dated 24.12.2004 for Rs. 1,13,160/- drawn on State Bank of India, Commercial Branch, pursuant to the order passed by this Court (Coram : Ravi. R. Tripathi,J.) and the respondent has to get the said amount after obtaining order from this Court. The respondent has to get the interest accrued on the amount deposited pursuant to the order of this Court and interest amount of Rs. 7,500/-. Out of the amount of Rs.1,67,500/- as per the compromise, after deducting the amount of Rs.1,20,660/-, being the amount deposited before this Court and interest, the petitioner has to pay remaining

amount of Rs. 46,840/- and the petitioner company agrees that the said amount will be paid by the petitioner company to respondent No.1 employee within one month from this compromise.

10. However, Mr. Prabhakar Upadyay, learned advocate for the petitioner states that amount of Rs. 46,840/- has already been paid to the respondent workman by Account Payee Cheque drawn on State Bank of India, Commercial Branch, Advances Department, Ahmedabad. Xerox copies of Receipt dated 4th July, 2007 as well as cheque dated 2nd July, 2007 drawn on State Bank of India in the name of Ajay H. Mishra for Rs.46,840/- is produced on record for our perusal.

11. In view of the settlement arrived at between the parties, it is now not necessary for us to answer the question referred to us by the learned Single Judge of this Court with regard to the applicability of Section 17-B of I.D. Act to an award passed under the provisions of B.I.R. Act.

12. In view of this, Special Civil Application is disposed of in terms of settlement arrived at between the parties. Rule is made absolute accordingly.

13. Registry is directed to pay the amount of

Rs.1,13,160/-, deposited by the petitioner with the Registry, along with the accrued interest thereon, to the respondent, upon due verification.

14. Since Special Civil Application is disposed of, no order is required to be passed in Civil Application No.3898/2005, and same stands disposed of in terms of the settlement pursis.

15. In view of order passed in Special Civil Application, Civil Application No.7042/2005 does not assume any survival value and same is disposed of accordingly.

**(A.M.Kapadia,J.)**

**(H.N.Devani,J.)**

(raghu)